

## Telecommunications Orders - Issued 1996

# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

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| <b>IN THE MATTER OF THE REQUEST FOR COMMENTS<br/>CONCERNING SECTIONS 252(a) AND 252 (b) OF THE<br/>TELECOMMUNICATIONS ACT OF 1996</b> | )<br><br>)<br><br>) | <b>ORDER SETTING<br/>ANTICIPATED<br/>PROCEDURES<br/><br/>TC96-082</b> |
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On May 14, 1996, at a regularly scheduled Public Utilities Commission (Commission) meeting, Commissioner Schoenfelder requested that a docket be opened to receive comments from interested persons and entities on Sections 252(a) and 252(b) of the Telecommunications Act of 1996. Specifically, the Commission would seek comments concerning the process to be used if any party negotiating an agreement under Section 252 asked the Commission to mediate any differences or if a party petitions the Commission to arbitrate any unresolved issues. The Commission unanimously voted to open the docket and directed the Executive Director to set a procedural schedule. By order dated May 16, 1996, a procedural schedule was set. Initial comments were due on or before June 3, 1996. Reply comments were due on or before June 14, 1996.

The following interested persons and entities submitted comments: MCI Telecommunications Corporation, Sprint Communications Company L.P., South Dakota Independent Telephone Coalition, AT&T Communications of the Midwest, Inc., Dakota Cooperative Telecommunications, Inc., U S WEST Communications, Inc., Telecommunications Resellers Association, and Commission staff.

After reviewing the comments and the Act, Commission anticipates that it will use the following procedures with respect to negotiations, mediations, and arbitrations. A specific procedural schedule will be issued for each case.

## NEGOTIATION

1. Parties shall notify the Commission in writing when a request for negotiation has been made under § 251. The notification shall include the names of the negotiating parties and the date of the request. Notification to the Commission is required by the party requesting voluntary negotiations and by the incumbent local exchange carrier who receives the request. If a request for negotiations has already been made, the Commission requires the parties to notify the Commission within five days of this order.
2. If the parties successfully negotiate an agreement, that agreement shall be filed with the Commission within 30 days of the signing of the agreement.

## MEDIATION

1. Any party requesting mediation pursuant to § 252(a)(2) shall do so in writing to the Commission. A copy of this mediation request to the Commission shall be simultaneously served on the other party in the dispute. Alternatively, parties may jointly submit in writing their request for Commission mediation. Parties need not seek mediation by the Commission and are free to employ the services of a private mediator.
2. If a party requests mediation by the Commission, the Commission will use Commission staff members to conduct the mediation. Commission staff members acting as mediators will not participate in the arbitration or approval process for the same agreement unless the parties consent.
3. All mediators shall keep confidential all information and records obtained in conducting mediation.
4. The mediator will not impose a settlement, but can offer proposals for settlement.
5. Only the parties to the negotiation may attend the mediation sessions unless all parties consent to the presence of others.
6. Within five business days after the Commission staff members are appointed as mediators by the Commission, the parties shall provide to the mediators a statement of each party's position and relevant background information, including a list of all issues raised in the negotiations in which mediation is sought and a list of all issues the parties have resolved through negotiation. Mediation requests shall not be docketed.

## ARBITRATION

1. Pursuant to § 252(b)(1), any party to the negotiation may petition the Commission to arbitrate any unresolved issues. Parties may continue to mediate or negotiate the disputed issues after arbitration is requested. If the parties reach a voluntary agreement, the parties may jointly submit their voluntary agreement to the Commission for the 90 day approval or rejection, along with a joint petition to dismiss the arbitration petition.
2. Pursuant to § 252(b)(2)(A), the petition for arbitration shall list in detail all of the unresolved issues the party or parties wish the Commission to arbitrate. The petition shall also state the position of each party on those issues. The petition shall list all issues discussed and resolved by the parties. In addition, the petition shall be accompanied by all relevant documentation. Pursuant to § 252(b)(2)(B), the petitioner shall serve all parties no later than the day the Commission receives the petition. Pursuant to § 252(b)(3), a non-petitioning party to the negotiation may respond to the other party's petition and provide additional information within 25 days after the Commission receives the petition.
3. A petition for arbitration shall be conducted by the Commissioners as a contested case proceeding. Within 30 days of receiving a petition for arbitration, the Commission may hold a prehearing conference.
4. A person who is not an original party to a proceeding may petition to intervene pursuant to SDCL §1-26-17.1 and the Commission's rules. Commission staff may operate as technical support and may not be a party to the proceeding. Any requests to consolidate arbitration proceedings will be considered on a case by case basis.

5. Pursuant to § 252(b)(4)(C), the Commission shall issue a written decision that resolves each issue set forth in the petition for arbitration no later than nine months after the date on which the local exchange carrier received the request for negotiations.

## APPROVAL OF AGREEMENTS

### Approval of Arbitrated Agreements

1. An arbitrated agreement shall be submitted to the Commission for approval under § 252(e) within 30 days after the issuance of the Commission's decision under § 252(b)(4)(C), unless good cause is shown to extend the 30 day time period. The Commission does not interpret the nine month time line for arbitration under § 252(b)(4)(C) as including the approval process. Pursuant to that section, the Commission will only be issuing a decision on unresolved issues. The Commission will not be issuing an agreement. It will be up to the parties to write and submit the agreement for approval under § 252(e).
2. The request for approval of an arbitrated agreement shall set forth each party's position as to whether the agreement should be adopted or modified and contain a separate explanation by each party of whether the agreement meets each of the specific requirements of §§ 251 and 252.
3. Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than 5 business days after the agreement is submitted to the Commission. Parties to the agreement may file written responses to the comments within 5 business days of service.
4. Pursuant to § 252(e)(4), the Commission will enter an order approving or rejecting the arbitrated agreement within 30 days after submission of the agreement by the parties.

### Approval of Negotiated Agreements

1. The parties shall submit a complete copy of the negotiated signed agreement, including any attachments.
2. The parties shall also submit a summarization of the main provisions of the agreement, including a statement as to why the agreement does not discriminate against non-party carriers and is consistent with the public interest, convenience, and necessity.
3. Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than 20 days after the agreement is submitted to the Commission. Parties to the agreement may file written responses to the comments within 20 days of service.
4. The Commission will enter an order approving or rejecting the negotiated agreement within 90 days.

### Approval of Combination Agreements (Arbitrated/Negotiated)

1. Any agreement containing both arbitrated and negotiated provisions shall clearly identify which sections were negotiated and which were arbitrated. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements with respect to the comment

timelines and the 30 day approval deadline. Except for the timelines, the negotiated sections shall comply with the provisions relating to the approval of negotiated agreements. The arbitrated sections shall comply with the provisions relating to the approval of arbitrated agreements, including the timelines.

2. In the alternative, the parties may submit negotiated and arbitrated agreements separately for approval.

IT IS THEREFORE

ORDERED, the Commission may use the above listed procedures. A specific procedural schedule will be issued for each case.

Dated at Pierre, South Dakota, this 28th day of August, 1996.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: \_\_\_\_\_

Date: \_\_\_\_\_

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
KENNETH STOFFERAHN, Chairman

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LASKA SCHOENFELDER,  
Commissioner

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